HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No.1184 of 1990

Date of decision : 21.02.2007

Jarnail Singh & another **.....Petitioners**

versus

Buta Singh and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : None.

* * *

ORDER

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court on 8.1.1990, whereby an application filed by the petitioner for impleading him as party to the suit in terms of Order 1 Rule 10 of the Civil Procedure Code, 1908 was dismissed.

Present is the suit for possession of the land measuring 482 kanals 13 marlas in respect of estate of deceased Sajjan Singh who died on 30.8.1984. The plaintiffs have sought a suit for possession being nearest reversioners of the deceased Sajjan Singh on the basis of decree dated 5.7.1947, whereas, petitioner has sought to be impleaded in the aforesaid suit being sister's son of the deceased.

The learned trial Court found that the present application has been filed on 16.10.1989 i.e. more than 5 years after the death of Sajjan Singh and right to claim possession could be claimed by the reversioners only 3 years from the date of death of the deceased Sajjan Singh. Therefore, the application is not maintainable being barred by limitation.

No doubt, the application has been filed after 3 years of the death of Sajjan Singh, but the question whether the plaintiffs or the applicant-petitioners are the nearest heirs and are entitled to claim the possession after the death of Sajjan Singh are the questions which are required to be decided by the learned trial Court on the basis of evidence to be led by the parties. The learned trial Court is also required to decide the question whether the petitioners are entitled to claim possession by moving an application after the expiry of 3 years. Section 21 of the Limitation Act, 1963 contemplates that where after the institution of the suit, a new plaintiff or defendant is substituted or added, the suit shall be deemed to have been instituted when he was so made a party.

Therefore, I am on the opinion that the petitioners can be impleaded as party, but the effect of consequences of impleadment of the petitioners as party to the suit are required to be dealt with by the learned trial Court after the evidence is led.

In view thereof, the present revision petition is allowed. The order passed by the learned trial Court dated 8.1.990 is set-aside. The petitioners are ordered to be impleaded as party to the suit in terms of Section 21 of the Limitation Act, 1963. The learned trial Court shall decide all the inter se disputes between the parties in accordance with law.

(HEMANT GUPTA)
JUDGE

February 21, 2007
**mohinder*